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SENATE BILL 376

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Ben D. Altamirano

AN ACT

RELATING TO PUBLIC EMPLOYEES; AMENDING THE PUBLIC EMPLOYEES
RETIREMENT ACT; PROVIDING FOR RE-EMPLOYMENT WITHOUT SUSPENSION
OF RETIREMENT BENEFITS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 10-11-8 NMSA 1978 (being Laws 1987,
Chapter 253, Section 8, as amended) is amended to read:

"10-11-8. NORMAL RETIREMENT-- [~~SUSPENSION~~] RETURN TO
EMPLOYMENT-- BENEFITS CONTINUED-- EMPLOYER CONTRIBUTIONS. --

A. A member may retire upon fulfilling the
following requirements:

(1) a written application for normal
retirement, in the form prescribed by the association, is filed
with the association prior to the selected date of retirement;

(2) employment is terminated with all

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1 employers covered by any state system or the educational
2 retirement system prior to the selected date of retirement;

3 (3) the member selects an effective date of
4 retirement that is the first day of a calendar month; and

5 (4) the member meets the age and service
6 credit requirement for normal retirement specified in the
7 coverage plan applicable to the member.

8 B. The amount of normal retirement pension is
9 determined in accordance with the coverage plan applicable to
10 the member.

11 ~~[C. If a member retires and is subsequently~~
12 ~~employed by any affiliated public employer, the retired~~
13 ~~member's pension will be suspended effective the first day of~~
14 ~~the month following the month in which the previously retired~~
15 ~~member earns one hundred percent or more of the amount that~~
16 ~~causes a decrease or suspension of an old age benefit under the~~
17 ~~federal social security program or fifteen thousand dollars~~
18 ~~(\$15,000), whichever is less. When the pension is suspended,~~
19 ~~the following conditions shall apply:~~

20 ~~(1) the retired member who is subsequently~~
21 ~~employed by an affiliated public employer shall become a~~
22 ~~member. The previously retired member and the subsequent~~
23 ~~affiliated public employer shall make the required employee and~~
24 ~~employer contributions, and the previously retired member shall~~
25 ~~accrue service credit for the period of subsequent employment;~~

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1 and

2 ~~(2) when a previously retired member~~
3 ~~terminates the subsequent employment with an affiliated public~~
4 ~~employer, he shall retire according to the provisions of the~~
5 ~~Public Employees Retirement Act, subject to the following~~
6 ~~conditions:~~

7 ~~(a) payment of the pension shall resume~~
8 ~~in accordance with the provisions of Subsection A of this~~
9 ~~section;~~

10 ~~(b) unless the previously retired member~~
11 ~~accrued at least three years of service credit on account of~~
12 ~~the subsequent employment, the recalculation of pension shall:~~
13 ~~1) employ the form of payment selected by the previously~~
14 ~~retired member at the time of the first retirement; and 2) use~~
15 ~~the provisions of the coverage plan applicable to the member on~~
16 ~~the date of the first retirement; and~~

17 ~~(c) the recalculated pension shall not~~
18 ~~be less than the amount of the suspended pension.~~

19 ~~D. The provisions of Subsection C of this section~~
20 ~~shall not apply to a retired member who is appointed chief of~~
21 ~~police of an affiliated public employer, other than of the~~
22 ~~affiliated public employer from which retired, or who is~~
23 ~~appointed undersheriff if the retired member files an~~
24 ~~irrevocable exemption from membership with the association~~
25 ~~within thirty days of appointment. For purposes of this~~

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1 ~~subsection, each sheriff's office shall be limited to one~~
2 ~~undersheriff. The irrevocable exemption shall be for the chief~~
3 ~~of police's or the undersheriff's term of office. Filing of an~~
4 ~~irrevocable exemption shall irrevocably bar the retired member~~
5 ~~from acquiring service credit for the period of exemption from~~
6 ~~membership.~~

7 E. ~~The provisions of Subsection C of this section~~
8 ~~shall not apply to any retired member who is subsequently~~
9 ~~employed by an employer who is not an affiliated public~~
10 ~~employer.~~

11 F. ~~The provisions of Subsection C of this section~~
12 ~~shall not apply to a retired member who is elected to serve a~~
13 ~~term as an elected official if the retired member files an~~
14 ~~irrevocable exemption from membership with the association~~
15 ~~within thirty days of taking office. Filing of an irrevocable~~
16 ~~exemption shall irrevocably bar the retired member from~~
17 ~~acquiring service credit for the period of exemption from~~
18 ~~membership.]~~

19 C. A retired member may be subsequently employed by
20 an affiliated public employer if the following conditions
21 apply:

22 (1) the member has not been employed as an
23 employee of an affiliated public employer for at least ninety
24 consecutive days from the date of retirement to the
25 commencement of employment or re-employment with an affiliated

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1 public employer. If the retired member returns to employment
2 without first completing ninety consecutive days of retirement,
3 the retired member shall remove himself from retirement;

4 (2) a retired member who returns to employment
5 shall be required to make contributions to the fund as
6 specified in the Public Employees Retirement Act. The
7 affiliated public employer's contributions as specified in that
8 act or as adjusted for full actuarial cost at the determination
9 of the association shall be paid to the fund; and

10 (3) a retired member who returns to employment
11 during retirement pursuant to this subsection is entitled to
12 receive retirement benefits but is not entitled to acquire
13 service credit or to acquire or purchase service credit in the
14 future for the period of the retired member's re-employment
15 with an affiliated public employer.

16 [~~G.~~] D. The pension of a member who has three or
17 more years of service credit under each of two or more coverage
18 plans shall be determined in accordance with the coverage plan
19 that produces the highest pension. The pension of a member who
20 has service credit under two or more coverage plans but who has
21 three or more years of service credit under only one of those
22 coverage plans shall be determined in accordance with the
23 coverage plan in which the member has three or more years of
24 service credit. If the service credit is acquired under two
25 different coverage plans applied to the same affiliated public

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1 employer as a consequence of an election by the members,
2 adoption by the affiliated public employer or a change in the
3 law that results in the application of a coverage plan with a
4 greater pension, the greater pension shall be paid a member
5 retiring from the affiliated public employer under which the
6 change in coverage plan took place regardless of the amount of
7 service credit under the coverage plan producing the greater
8 pension, provided the member has three or more years of
9 continuous employment with that affiliated public employer
10 immediately preceding or immediately preceding and immediately
11 following the date the coverage plan changed. The provisions
12 of each coverage plan for the purpose of this subsection shall
13 be those in effect at the time the member ceased to be covered
14 by the coverage plan. "Service credit", for the purposes of
15 this subsection, shall be only personal service rendered an
16 affiliated public employer and credited to the member under the
17 provisions of Subsection A of Section 10-11-4 NMSA 1978.
18 Service credited under any other provision of the Public
19 Employees Retirement Act shall not be used to satisfy the
20 three-year service credit requirement of this subsection."